

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 * * *

4 WHITNEY MITCHELL,

5 Plaintiff,

6 v.

7 AUTO MART LLC and RIGHT-NOW
8 RECOVERY LLC,

9 Defendants.

Case No. 2:21-cv-00020-JAD-EJY

ORDER

10 Pending before the Court is Plaintiff Whitney Mitchell's Motion to Extend Time to Serve
11 Auto Mart LLC *nunc pro tunc*. ECF No. 10.

12 A review of the electronic docket in this matter reveals that Plaintiff filed a Complaint in
13 federal court on January 5, 2021, with service on Defendants due by April 5, 2021. ECF No. 1. On
14 January 6, 2021, a summons was issued for Defendant Right-Now Recovery, LLC. No record of
15 service on this defendant is filed with the Court; however, Right-Now Recovery filed an answer to
16 Plaintiff's Complaint on March 2, 2021. ECF No. 4. Plaintiff says that after filing this action and
17 obtaining some unidentified co-counsel, Plaintiff believed Auto Mart would be dismissed or stayed
18 by stipulation pending the outcome of an arbitration to be conducted before JAMS. ECF No. 10 at
19 2. Plaintiff further explains that in a prior state court action, based on substantially similar facts,
20 Auto Mart moved to compel arbitration, to which Plaintiff agreed. *Id.* at 3.

21 Upon filing this matter, Plaintiff emailed counsel for Auto Mart explaining the
22 commencement of the case, including a stipulation to dismiss the state court case, and discussing a
23 stipulation to stay the federal court matter pending arbitration. ECF No. 10-9. Counsel for Auto
24 Mart responded on January 6, 2021 stating Plaintiff should dismiss the federal court action and then
25 he would talk to Plaintiff's counsel "regarding arbitration of [sic] case." *Id.*

26 Plaintiff filed his claims with JAMS on January 7, 2021, counsel for Auto Mart emailed
27 JAMS on February 5, 2021 with contact information (ECF No. 10-8), on March 8, 2021 Plaintiff
28 served his arbitration complaint and demand on Auto Mart (ECF No. 10-10), and on March 26, 2021,

1 JAMS issued a Notice of Intent to Arbitrate to all parties. ECF No. 10-11. In the Notice, JAMS
2 states: “Under JAMS Minimum Standards of Procedural Fairness in Consumer Arbitrations, the
3 consumer/Claimant is responsible for \$250.00 of the Filing Fee. The company/Respondent must
4 pay the remaining \$1500.00. The Filing Fee must be paid by no later than April 9, 2021.” *Id.* As
5 of May 7, 2021, Auto Mart had not paid the JAMS filing fee. ECF No. 10 at 3. Plaintiff now seeks
6 additional time to serve Auto Mart under Fed. R. Civ. P. 4(m).

7 Fed. R. Civ. P. 4(m) states, in pertinent part, that “[i]f a defendant is not served within 90
8 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—
9 must dismiss the action without prejudice against that defendant or order that service be made within
10 a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time
11 for service for an appropriate period.” Plaintiff demonstrates good cause for his failure to serve Auto
12 Mart by or before April 5, 2021. In January 2021, Auto Mart stated that arbitration before JAMS
13 was the proper forum in which the matter had to proceed, and the same counsel responded to JAMS
14 in February 2021 when JAMS sought contact information for defendant’s counsel. Plaintiff served
15 Auto Mart with his arbitration demand on March 8, 2021 (ECF No. 10-10), and JAMS served its
16 Notice of Intent to Initiate Arbitration on March 26, 2021. ECF No. 10-11. Thus, Plaintiff
17 appropriately pursued this action in Arbitration, which it believed was the forum in which he should
18 proceed given the history of interactions with Auto Mart. Under these circumstances, the delay in
19 serving Auto Mart is excused.

20 Accordingly, IT IS HEREBY ORDERED that Plaintiff’s Motion to Extend Time to Serve
21 Auto Mart LLC *nunc pro tunc* (ECF NO. 10) is GRANTED.

22 IT IS FURTHER ORDERED that Plaintiff shall have through and including May 25, 2021
23 (10 Court days) within which to serve this defendant.

24 Dated this 10th day of May, 2021.

25
26 
27 ELAYNA J. YOUCHAK
28 UNITED STATES MAGISTRATE JUDGE